

1 Randall J. Sunshine, Esq. (SBN: 137363)
 rsunshine@linerlaw.com
 2 Angela C. Agrusa, Esq. (SBN: 131337)
 aagrusa@linerlaw.com
 3 David B. Farkas, Esq. (SBN: 257137)
 dfarkas@linerlaw.com
 4 LINER GRODE STEIN YANKELEVITZ
 SUNSHINE REGENSTREIF & TAYLOR LLP
 5 1100 Glendon Avenue, 14th Floor
 Los Angeles, California 90024-3503
 6 Telephone: (310) 500-3500
 Facsimile: (310) 500-3501
 7

8 Attorneys for Defendant
 NEVADA PROPERTY 1 LLC

9 **UNITED STATES DISTRICT COURT**
 10 **SOUTHERN DISTRICT OF CALIFORNIA**
 11

12 SASAN MIRKARIMI, individually and
 on behalf of all others similarly situated,

13 Plaintiff,

14 vs.

15 NEVADA PROPERTY 1 LLC, a
 Delaware limited liability company DBA
 16 THE COSMOPOLITAN HOTEL OF
 LAS VEGAS, and DOES 1-50, inclusive,

17 Defendant.
 18

Case No. 3:12-cv-02160-BTM-DHB

Honorable Barry Ted Moskowitz

**DEFENDANT NEVADA
 PROPERTY 1 LLC DBA THE
 COSMOPOLITAN OF LAS
 VEGAS' NOTICE OF MOTION
 AND MOTION TO DISMISS
 PLAINTIFF'S FIRST AMENDED
 COMPLAINT, OR, IN THE
 ALTERNATIVE, STRIKE CLASS
 ALLEGATIONS**

[FRCP 12(b)(6), 12(f), and 23]

[Memorandum of Points and
 Authorities In Support Thereof and
 Request for Judicial Notice Filed
 Concurrently Herewith]

Date: December 21, 2012

Time: 11:00 a.m.

Courtroom: 15

**TO THE HONORABLE COURT, ALL PARTIES, AND ALL
ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that on December 21, 2012 at 11:00 a.m. in Courtroom 15 of the above-entitled Court, located at 450 Golden Gate Avenue, San Francisco, California 94102, Defendant Nevada Property 1 LLC DBA The Cosmopolitan of Las Vegas will, and hereby does, move the Court for an order (i) dismissing with prejudice Plaintiff Sasan Mirkarimi's First Amended Complaint, and each and every claim for relief therein pursuant to Federal Rule of Civil Procedure 12(b)(6); or, in the alternative, (ii) striking with prejudice all class allegations therein pursuant to Federal Rules of Civil Procedure 12(f) and 23.

The Motion is made pursuant to Federal Rule of Civil Procedure 12(b)(6) on the ground that Plaintiff's claim for violation of Penal Code Sections 632 and 632.7 fails to state a claim upon which relief can be granted. Among other things, there is no objectively reasonable expectation of confidentiality in the customer-related communications at issue, and therefore the First Amended Complaint does not state a viable claim. The Motion is also made pursuant to Federal Rules of Civil Procedure 12(f) and 23 on the ground that Plaintiff's allegations reflect that a class action cannot be certified. Based on the facts alleged in the First Amended Complaint, a class action cannot be maintained as a matter of law because individualized issues will necessarily predominate. Further, the class is not ascertainable because the resolution of the claims at issue require a determination of the state of mind of each of the potential class members. Moreover, Plaintiff seeks aggregated statutory damages, which, as a matter of law, render all class allegations improper, not superior and will violate due process. These deficiencies cannot be cured.

//

//

//

//

1 This Motion is based upon this Notice, the accompanying Memorandum of
2 Points and Authorities, Defendant's Request for Judicial Notice, and such further
3 evidence and argument as may be judicially noticed or presented for consideration in
4 support hereof.

5 Dated: October 9, 2012

LINER GRODE STEIN YANKELEVITZ
SUNSHINE REGENSTREIF & TAYLOR LLP

6
7 By: /s/ Angela C. Agrusa

8 Randall J. Sunshine

9 Angela C. Agrusa

10 David B. Farkas

11 Attorneys for Defendant

12 NEVADA PROPERTY 1 LLC
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28